

## **REMARKS**

### **Status of the Claims**

Claims 1-9 and 11-35 are now present in this application. Claims 1, 11, 12-17 and 21 are independent.

Claim 10 was previously canceled

Claims 25 and 28-34 have been amended for clarity.

No new matter has been added by way of the above-amendment. Reconsideration of this application, as amended, is respectfully requested.

### **Claim Objections**

The Examiner objects to claims 25 and 28-34. In response, Applicants have followed the Examiner's suggestion to amend each one of these claims by inserting the phrase "any one of" before "an aminoquinoxaline compound as defined in claim 1 or a polyaminoquinoxaline compound as defined in claim 21." As such, withdrawal of the objection is respectfully requested.

### **Obviousness-Type Double Patenting**

Claims 21-24 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 15-17 of copending Application No. 10/588,232. This rejection is respectfully traversed.

The claimed invention was made by or on behalf of YAMAGUCHI UNIVERSITY and/or NISSAN CHEMICAL INDUSTRIES, LTD., who are each parties to a **Joint Research Agreement** that was in effect on or before the date the claimed invention was made. The claimed invention was made as the result of activities undertaken within the scope of the Joint Research Agreement. As such, Applicants co-file herewith: a) a Terminal Disclaimer (TD) over the '232 application; and b) a Statement under 37 CFR 1.104(c)(4). Also, Applicants have amended the specification to refer to the Joint Research Agreement.

In legal principle, the filing of a TD simply serves the statutory function of removing the rejection of obviousness-type double patenting, and does not raise a presumption on the merits of the rejection. It is improper to view the simple expedient of "obviation" as an admission or acquiescence on the merits. *Ortho Pharmaceutical Corp. v. Smith*, 22 USPQ2d 1119, 1124 (Fed.

Cir. 1992) citing *Quad Envtl. Technologies Corp. v. Union Sanitary Dist.*, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-95 (Fed. Cir. 1991).

Based on the foregoing, the obviousness-type double patenting rejection is rendered moot.

### Examiner Interviews

Applicants wish to thank the Examiner for the courtesies extended to Applicants' representative, Garth M. Dahlen, Ph.D., Esq. (#43,575) during the telephonic interviews on March 10, 2010 and June 9, 2010.

With respect to the telephonic interview on March 10, 2010, Applicants find that the Examiner's Interview Summary form adequately describes the scope and content of the discussion.

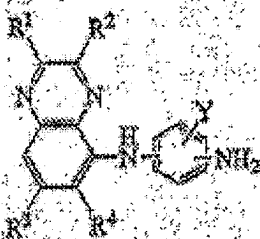
With respect to the telephonic interview on June 9, 2010, Dr. Dahlen asked Examiner Fang if a Terminal Disclaimer is necessary in the present case, since a Terminal Disclaimer was filed in the copending Application No. 10/588,232. Examiner Fang indicated that he asked a Supervisory Patent Examiner, who confirmed that the Terminal Disclaimer was necessary.

### Allowable Subject Matter

Applicants note with appreciation that the Examiner states that claims 1-9 and 11-35 are allowable.

Applicants note that at page 3, of the outstanding Office Action, the Examiner states:

Current claims 1 and 11-14 are represented by:



...

Applicants respectfully submit that this structure is misleading. Applicants note that claim 1 recites that "Y" is an optional substituent on the benzene ring. However, in the above-structure, it appears that "Y" is a required substituent.

### Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.


In view of the above amendment, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq., Reg. No. 43,575 at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: June 10, 2010

Respectfully submitted,

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Attachments: a) Terminal Disclaimer and b) Statement under 37 CFR 1.104(c)(4).